

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

RONNIE MOSES)	
)	
Plaintiff,)	Civil Action File No.
)	
v.)	
)	
STEVEN BENEFIELD,)	[ON REMOVAL FROM THE
SUPERVALU TRANSPORTATION,)	STATE COURT OF CLAYTON
INC. and OLD REPUBLIC)	COUNTY CIVIL ACTION FILE
INSURANCE COMPANY,)	NO. 2013CV03081MG]
)	
Defendants.)	

NOTICE OF REMOVAL

COME NOW Defendants SUPERVALU TRANSPORTATION, INC. and OLD REPUBLIC INSURANCE COMPANY and file this Notice of Removal pursuant to 28 U.S.C. § 1441 and 1446, respectfully showing the Court the following facts:

1.

Plaintiff commenced this action in the State Court of Clayton County, Georgia by filing the Complaint on September 9, 2013, naming Defendants Steven Benefield, Supervalu Transportation, Inc., and Old Republic Insurance Company.

This Notice of Removal is filed within one year of the commencement of the action. Removal is thus timely under 28 U.S.C. § 1446(b).

2.

SUPERVALU TRANSPORTATION, INC. was served with the Complaint and Summons in this matter on September 18, 2013.

3.

OLD REPUBLIC INSURANCE COMPANY was served with the Complaint and Summons in this matter on September 17, 2013.

4.

Upon information and belief, STEVEN BENEFIELD has not been served with the Complaint and Summons in this matter as of the time of this Notice of Removal.

5.

Upon information and belief, Plaintiff RONNIE MOSES is a Georgia resident.

6.

Defendant SUPERVALU TRANSPORTATION, INC. (hereinafter “Supervalu”) is a citizen of foreign states, being a corporation organized and

existing under the laws of the State of Minnesota and having its principal place of business in the State of Idaho.

7.

Defendant OLD REPUBLIC INSURANCE COMPANY (hereinafter “Old Republic”) is a citizen of a foreign state, being a corporation organized and existing under the laws of the State of Pennsylvania and having its principal place of business in the State of Pennsylvania.

8.

Upon information and belief, Defendant STEVEN BENEFIELD (hereinafter “Benefield”) is a citizen of the State of Alabama.

9.

Complete diversity exists between Plaintiff and Defendants in accordance with 28 U.S.C. § 1332(a)(1).

10.

The Complaint filed by Plaintiff seeks damages for pain and suffering, mental anguish, lost wages, punitive damages, diminished quality of life, and medical expenses of no less than \$86,593.22. Thus, the damages sought by Plaintiff exceed \$75,000.00. Therefore, the amount in controversy exceeds

\$75,000.00, exclusive of interest and costs, for purposes of this removal.

11.

The consent of Defendants Supervalu and Old Republic is sufficient to remove this case to Federal Court, as Defendant Benefield has not yet been served with process in this matter. Under the law, “[t]he requirement that there be unanimity of consent in removal cases with multiple defendants does not require consent of defendants who have not been properly served.” *Borges v. Bank of Am., NA*, 2012 U.S. Dist. LEXIS 133931, 29 (N.D. Ga. 2012) (citing *Johnson v. Wellborn*, 418 Fed. Appx. 815, 815 (11th Cir. 2011)). *See also McClain v. Bank of Am. Corp.*, 2013 U.S. Dist. LEXIS 50034, 7 (S.D. Ga. April 5, 2013) (only a properly served and joined defendant can prevent removal). Therefore, the consent of Defendant Benefield, who has not been served with process in this case, is not required for removal to Federal Court.

12.

This case is a civil action that may be removed to this Court pursuant to 28 U.S.C. § 1441. This court has original jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) and (b) because there is complete diversity of citizenship between Plaintiff and Defendants and the amount in controversy exceeds \$75,000.00.

Further, as required by 28 U.S.C. § 1441(b), no defendant is a citizen of the State of Georgia.

13.

Defendants have attached hereto copies of all process, pleadings, and Orders that have been filed in the State Court of Clayton County prior to the date of this Notice of Removal, such copies being marked as Exhibit “A.”

14.

Defendants have given written notice of the filing of this Notice of Removal to Plaintiff by notifying his attorneys of record, Eric Jensen, Esq. and Jason W., Graham, Esq., and T. Brandon Welch, Graham & Penman, LLP, 17 Executive Park Drive, Suite 115, Atlanta, Georgia 30329.

15.

Defendants are filing a written notice with the Clerk of the State Court of Clayton County, a copy of said Notice being attached hereto as Exhibit “B.”

WHEREFORE, Defendants SUPERVALU TRANSPORTATION, INC. and OLD REPUBLIC INSURANCE COMPANY pray the case be removed to the United States District Court for the Northern District of Georgia, Atlanta Division.

This 16th day of October, 2013.

Respectfully submitted,

SWIFT, CURRIE, McGHEE & HIERS, LLC

By: /s/ C.L. Parker
Maren R. Cave
Georgia State Bar No. 278448
C.L. Parker
Georgia State Bar No. 722011
Attorneys for Defendants

The Peachtree
Suite 300
1355 Peachtree Street, N.E.
Atlanta, Georgia 30309
(404) 874-8800
maren.cave@swiftcurrie.com
cl.parker@swiftcurrie.com

CERTIFICATE OF SERVICE

This is to certify that I have this day served opposing counsel with a copy of the within and foregoing **NOTICE OF REMOVAL** by depositing a copy of said pleading in the United States Mail with proper postage affixed thereto to ensure proper delivery and addressed as follows:

Eric L. Jensen, Esq.
Jason W. Graham, Esq.
T. Brandon Welch, Esq.
Graham & Penman, LLP
17 Executive Park Drive
Suite 115
Atlanta, GA 30329

This 16th day of October, 2013.

SWIFT, CURRIE, McGHEE & HIERS, LLC

By: /s/ C.L. Parker
Maren R. Cave
Georgia State Bar No. 278448
C.L. Parker
Georgia State Bar No. 722011
Attorneys for Defendants

The Peachtree
Suite 300

1355 Peachtree Street, N.E.
Atlanta, Georgia 30309
(404) 874-8800
maren.cave@swiftcurrie.com
cl.parker@swiftcurrie.com